

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MINNESOTA LIFE INSURANCE) Case No. 8:09-cv-22
COMPANY)
400 North Robert Street)
St. Paul, Minnesota 55101,)
)
Interpleader Plaintiff,)
)
vs.)
)
NINA G. ATKINSON; MENDEL B. MILLER;)
MINDY R. HANSEN; MERRIS B. MILLER;)
and MARCY R. WOITA,)
)
Defendants.)

ORDER

This matter comes before the Court on the Agreed Motion of Minnesota Life Insurance Company for Discharge and Award of Attorney Fees and Costs (Filing No. 39). This is an interpleader action. On April 14, 2009, Minnesota Life paid \$131,669.41 into Court, said payment representing the proceeds of the life insurance policy made the subject of this interpleader action, plus accrued interest. Defendants Mendel B. Miller, Mindy R. Hansen, Merris B. Miller and Marcy R. Woita (the "Millers") entered into a stipulation for dismissal of their counterclaim against Minnesota Life and the counterclaim was dismissed. Filing No. 31, Stipulation; Filing No. 36, Order. Minnesota Life was a disinterested stakeholder in this matter and filed this interpleader action in good faith in order to avoid the possibility of multiple liability to the defendants.

A federal court has discretion to award costs and counsel fees to the stakeholder in an interpleader action, whether brought under Rule 22 or the interpleader statute, whenever it is fair and equitable to do so. 7 Fed. Prac. & Proc. § 1719 (2009). As a general rule, attorney's fees will be awarded to the stakeholder in an interpleader proceeding where the stakeholder acts in a "disinterested" manner and filed its suit "in

good faith. . . ." *Equifax, Inc. v. Luster*, 463 F. Supp. 352, 357 (E.D. Ark.), *aff'd on other grounds sub nom. Arkansas Louisiana Gas Co. v. Luster*, 604 F.2d 31 (8th Cir. 1980); but cf. *Clark v. Paul Revere Life Insurance Co.*, 417 F.2d 683, 686 (8th Cir. 1969) (stakeholder may be denied attorney's fees under unspecified "peculiar circumstances").

In connection with the filing of this interpleader action, Minnesota Life has incurred attorney fees in the amount of \$5,382.00 together with court costs of \$350.00 for a total of \$5,732.00. Minnesota Life represents to the court in its Agreed Motion (Filing No. 39) that the defendants have stipulated to the award of fees and costs in that amount. Accordingly,

IT IS ORDERED that:

1. Minnesota Life is discharged from this matter as the Interpleader Plaintiff.
2. Minnesota Life is awarded attorney fees in the amount of \$5,382.00 and court costs in the amount of \$350.00, for a total of \$5,732.00.
3. The Court orders that the Clerk of the United States District Court shall issue a check payable to Minnesota Life Insurance Company in the amount \$5,732.00.

DATED this 4th day of September, 2009.

BY THE COURT:

s/ Joseph F. Batatillon
United States District Court Judge